

PREAMBLE

Background: Arizona Revised Statutes, Title 49, Chapter 3, Article 2, Section 455 (A.R.S. § 49-455) established what is commonly referred to as the Air Permits Administration Fund (APAF). Pursuant to A.R.S. § 49-426(E), the Director of ADEQ was to establish by rule, a system of fees that was consistent with or equivalent to the fees that were prescribed by Section 502 of the Clean Air Act. In addition, the statute requires a system for collecting fees for permitting and inspecting sources which were required to obtain air quality permits pursuant only to State law.

When first established in 1993, revenues from the fee rule were primarily from annual emission-based fees assessed on sources subject to Title V of the Clean Air Act (40 CFR Part 70). One of the recognized issues related to the initial program was that the vast majority of revenues came from a relatively small number of sources, which financed a significant portion of program costs or activities related to a large number of small permitted sources. In addition, the dependence upon emissions fees made program funding vulnerable to curtailments in source operations.

ADEQ developed an updated workload analysis in 1999 of the costs associated with all components of the air quality programs and initiated a stakeholder process to develop a modified structure for revenues that would provide a more stable revenue stream and redistribute the cost of the permitting programs. Based upon this information, the stakeholder community hired the Kendall Group, Inc. to develop a model that would balance revenue-generating activities such as emissions fees, annual administrative/inspection fees, and hourly billable rates with the expenditures necessary to support the permitting and compliance programs for the Air Quality Division. This model resulted in a new fee rule that went into effect on January 1, 2002.

Revenues in Fiscal Year 2003, the first year of the revised fee rule, failed to meet projections. Total expenditures for that Fiscal Year were \$5.1 million, while revenues only realized \$3.4 million. Beginning in Fiscal Year 2004 (July 1, 2003 – June 30, 2004), actual revenues were insufficient to achieve on-going Fund solvency. In order to ensure the projected solvency of the Fund, subsidies from other funds (general and federal) were used until more permanent measures could be employed. In Fiscal Year 2005, ADEQ retained the services of the Kendall Group, Inc. to revisit the model used to establish the fee rule, resulting in a revision in November 2004. This revision again caused revenues to more closely match projected

expenditures. While the 2004 revisions increased revenues, they did not permanently resolve insolvency issues.

The Governor's Office of Strategic Planning and Budgets states that a fund demonstrates insolvency when an ending monthly balance has less than three months of operational monies. Using this definition, projections forecast that the APAF would be insolvent in November of 2007, while still reflecting a positive cash balance. Recent projections, however, forecast negative Fund balances beginning in September 2008 (Fiscal Year 2009).

Due to these projections, the model used to develop the fee rule in 2004 was again revisited to determine if it accurately predicted the costs associated with implementing the permitting and compliance programs. Changes were made to the model and resulting spreadsheet based on current conditions,* which resulted in the following recommendations:

- Permit processing fees should be increased from \$105.80 per hour to \$133.50 per hour to reflect the true burdened cost of providing permit processing services.
- Annual administrative fees should be raised from an average of \$3,874 to \$6,371 per source.
- The fee per ton of pollution emitted should be raised from \$14.17 to \$38.25.
- Any changes to the permit fee rules should become effective as soon as possible to address the afore mentioned solvency issues.
- Periodic billing of permit processing fees should be implemented.
- Applicants using the Tier 4 method under R18-2-1708(B) for conducting a risk management analysis (RMA) should pay any costs incurred in ADEQ's contacting for, hiring or supervising work of outside consultants.
- The permit processing fee should apply to all new applications for Authorizations to Operate for new equipment.
- Permit applicants should pay the actual costs of public notice, which include publications and mailings.

* Permit Processing, Administrative, and Emissions-based fees are adjusted annually on November 1st by multiplying the current base year rate to the Consumer Price Index value which is published by the Bureau of Labor Statistics.

Along with the above recommendations, additional amendments were made within the rule. The first, a new source category, Air Curtain Destructors, has been added based on a federal rulemaking. Second, a subsection has been added for Class I Title V Petroleum Refineries, based on the proposed Arizona Clean Fuels, Yuma L.L.C. Refinery.

ADEQ held three meetings in August 2007 to inform stakeholders of the seriousness of the problem and to discuss the upcoming proposed rule revisions. As a result, ADEQ is proposing to amend R18-2-326 and R18-2-511 to implement the recommendations noted above with an immediate effective date.

Section by Section Explanation of Significant Proposed Changes.

R18-2-326. Fees Related to Individual Permits: The amendments proposed in this section would make several changes to the rule. First, the rule revision would raise the current permit processing fee from \$105.80 to \$133.50 per hour for all permit processing time required for a billable permit action. Second, administrative fees would be raised from an average of \$3,874 to \$6,371 per source. Third, emission fees would be raised from \$14.17 to \$38.25. Fourth, an owner or operator would be required to pay the actual costs of public notice according to R18-2-330. Fifth, periodic billing would be implemented for all fees based on the most recent accounting of ADEQ or contractor time spent processing a permit application. Sixth, Air Curtain Destructors would be added to the list of sources paying Class I Title V administrative fees. The addition of this source category reflects an amendment to the Federal New Source Performance published December 16, 2005, at 70 FR 74869. Seventh, if an applicant for a permit uses the Tier 4 method to conduct a Risk Management Analysis (RMA) under R18-2-1708(B), the applicant would pay all fees incurred for contacting, hiring or supervising the work of outside consultants. This would include other State agencies acting in that capacity. Finally, a subsection has been added to delineate the administrative fees that would be paid by Class I Title V Petroleum Refineries. Other minor and technical changes were made to this section to improve clarity.

R18-2-511. Fees Related to General Permits: The amendments proposed in this section parallel those in R18-2-326. First, administrative fees are proposed to be raised from an average of \$3,874 to \$6,371 per source. Second, an owner or operator with a general permit will pay the fee of \$500 for all new applications for Authorizations to Operate (ATOs) for new equipment. Third,

the owner or operator of a source that is required to have a general permit and has undergone initial startup by January 1st will pay the applicable administrative or inspection fee. This proposed change applies to those operating facilities that have already applied for an air quality permit through ADEQ and have begun operation, but have not yet been issued the permit by the Department.

Immediate Effective Date: ADEQ is requesting an immediate effective date for these rules under A.R.S. § 41-1032. A.R.S. § 41-1032(A)(1) allows for an immediate effective date to preserve the public health or safety. If the APAF goes bankrupt, permitted sources will, in effect, be unregulated, thus putting the health and safety of the public at risk. A.R.S. § 41-1032(A)(2) also allows an immediate effective date in order to avoid a violation of federal law or regulations. Section 502(b)(3) of the Clean Air Act directs states to require source owner or operators to pay a fee sufficient to cover all reasonable costs required to develop and administer the Title V Operating Permit Program required by the Act. 40 CFR 70.9(b)(1) requires state permit programs to establish a fee schedule that results in the collection and retention of sufficient revenues to cover permit program costs.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

“Review, Assessment and Recommendations for the Arizona Department of Environmental Quality (ADEQ) Air Permits Administration Fund (Appropriated Fund 2200),” prepared by The Kendall Group, Inc., June 9, 2004.

"Arizona Department of Environmental Quality Revised White Paper for Permit Fee Amendments," prepared by Eric C. Massey, August 10, 2007.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The summary of the economic, small business, and consumer impact:

A. Rule Identification

This rulemaking amends A.A.C. R18-2-326, "Fees Related to Individual Permits" and A.A.C. R18-2-511, "Fees Related to General Permits."

B. Executive Summary

The goal of this rulemaking is to balance the Air Permit Administration Fund (APAF) revenues with appropriate and necessary Air Quality Division expenditures. The incremental cost to the regulated community is represented by the change in costs for the permit program. Funds include an emissions-based fee, administrative and inspection fees, and an hourly rate fee.

Regulated sources in Arizona are expected to generate approximately \$7.9 million in annual revenues for Title V and Non-Title V permits. Annual revenues required to operate the air quality permits program were estimated at \$7.1 million. The difference between expected revenues and program costs represents an annual surplus to allow the APAF to remain solvent.

By balancing revenues and expenditures, the regulated community is avoiding the potential impacts of failure of the APAF. Under Title V of the Clean Air Act and federal implementing regulations, EPA would be forced to intervene and ADEQ would no longer be able to staff and operate the permitting program. Finally, the permit fees under this rule fund program operations such as inspections.

The proposed changes would become effective during Fiscal Year 2008. Adequate revenues to operate ADEQ's air permit program will help improve air quality in the state and facilitate timely permit issuance. ADEQ expects that a well-functioning air permit program has potential to preserve a good business climate, increase opportunities for employment, and generate public health benefits.

C. Background.

Arizona Revised Statutes, Title 49, Chapter 3, Article 2, Section 455 (A.R.S. § 49-455) established what is commonly referred to as the Air Permits Administration Fund (APAF). Pursuant to A.R.S. § 49-426(E), the Director of ADEQ was to establish by rule, a system of fees that was consistent with or equivalent to the fees that were prescribed by Section 502 of the Clean

Air Act. In addition, the statute requires a system for collecting fees for permitting and inspecting sources which were required to obtain air quality permits pursuant only to State law.

When first established in 1993, revenues from the fee rule were primarily from annual emission-based fees assessed on sources subject to Title V of the Clean Air Act (40 CFR Part 70). One of the recognized issues related to the initial program was that the vast majority of revenues came from a relatively small number of sources, which financed a significant portion of program costs or activities related to a large number of small permitted sources. In addition, the dependence upon emissions fees made program funding vulnerable to curtailments in source operations.

ADEQ developed an updated workload analysis in 1999 of the costs associated with all components of the air quality programs and initiated a stakeholder process to develop a modified structure for revenues that would provide a more stable revenue stream and redistribute the cost of the permitting programs. Based upon this information, the stakeholder community hired the Kendall Group, Inc. to develop a model that would balance revenue-generating activities such as emissions fees, annual administrative/inspection fees, and hourly billable rates with the expenditures necessary to support the permitting and compliance programs for the Air Quality Division. This model resulted in a new fee rule that went into effect on January 1, 2002.

Revenues in Fiscal Year 2003, the first year of the revised fee rule, failed to meet projections. Total expenditures for that Fiscal Year were \$5.1 million, while revenues only realized \$3.4 million. Beginning in Fiscal Year 2004 (July 1, 2003 – June 30, 2004), actual revenues were insufficient to achieve on-going Fund solvency. In order to ensure the projected solvency of the Fund, subsidies from other funds (general and federal) were used until more permanent measures could be employed. In Fiscal Year 2005, ADEQ retained the services of the Kendall Group, Inc. to revisit the model used to establish the fee rule, resulting in a revision in November 2004. This revision again caused revenues to more closely match projected expenditures. While the 2004 revisions increased revenues, they did not permanently resolve insolvency issues.

The Governor's Office of Strategic Planning and Budgets states that a fund demonstrates insolvency when an ending monthly balance has less than three months of operational monies. Using this definition, projections forecast that the APAF would be insolvent in November of 2007, while still reflecting a positive cash balance. Recent projections, however, forecast negative Fund balances beginning in September 2008 (Fiscal Year 2009).

This proposed rulemaking is needed to correct this deficiency.

D. Entities Directly Affected.

ADEQ anticipates that this proposed rulemaking would impact approximately 740 currently permitted sources, as well as additional future sources. The current inventory includes sources holding Class I, Title V, Class II, Title V and Class II Non-Title V permits. Other entities impacted include ADEQ, consumers, and general public. Counties with their own permitting programs (Maricopa, Pinal, and Pima counties) may experience indirect impacts. A.R.S. § 49-112(B) requires county fees to be approximately equal to those of ADEQ. ADEQ has no information that the counties are experiencing revenue shortfalls.

E. Potential Costs and Benefits

ADEQ expects an increase in revenues from these rule changes that will be sufficient to efficiently and effectively operate its air permit administration program and ensure that the APAF will remain solvent.

Regulatory Agencies

To properly implement ADEQ's air quality permitting and compliance programs, seven additional FTEs will be required. The regulatory burden of monitoring, recordkeeping, reporting, and testing have grown but staff levels have remained constant.

An additional five FTEs are needed in order to ensure continued compliance with the monitoring strategy agreed upon with EPA which includes: performance measures, including complaint response, and to ensure effective ADEQ presence at the increasing number of stack tests required by air quality permits. These five FTEs will allow for adequate oversight of performance testing, stationary source inspections, and complaint response in areas of the state where ADEQ does not have field offices.¹

Additionally, most new sources of air pollution that enter the State require an ambient air quality dispersion modeling analysis in order to demonstrate that the new emissions of air pollution will not result in significant risk to public health. As a result, an additional FTE is needed to review the air dispersion modeling analyses submitted with air quality permit applications.

Along with modeling, many sources are required by their permits to operate ambient air monitoring systems. As a result, an additional FTE is needed to assist in the operation of new ambient air monitors, and quality assure and check the data being submitted by permitted facilities that are operating such equipment pursuant to a permit condition.

Other agencies are not expected to be directly impacted. ADEQ considers any impacts to sources in counties with their own pollution control programs to be indirect. ADEQ has no information that the counties are experiencing revenue shortfalls.

Regulated Community

Entities impacted include Class I Title V sources (e.g., Portland cement plants, combustion boilers, compressor stations, lime plants, mines, paper plants, smelters, utilities, and others); Class II Title V sources (synthetic minor sources, other stationary sources, portable sources, and small sources); Class II Non-Title V sources (smaller synthetic minor sources, stationary sources, portable sources, and others).

The revised fee schedule is as follows: hourly rate increased from \$105.80 to \$133.50; emission-based fees increased from \$14.17 to \$38.25; and average administrative fees increased approximately from \$3,874 to \$6,371 per source. The proposed emission-based fees and administrative or inspection fees would be increased over the 2006 fees, as adjusted by the Consumer Price Index consistent with R18-2-326. For additional information about permit fee adjustments, 2004 fee rule, and the proposed fee schedule, refer to Addendum A.

To revise the hourly rate, ADEQ reassessed the number of billable hours per employee, by adjusting non-program and program time, as well as the cost of management, technical and clerical personnel needed to supervise and support these employees.

Air Quality permit engineers are required to bill applicants for every hour spent processing an air quality permit application, producing an air quality permit, and developing the supporting documentation. The engineer's time has been broken down into two major categories, program time and non-program time.

1. Non-Program Time

Non-program time is the category that includes such items as employee benefits (annual and sick leave, holidays), lost time due to employee turnover, and time spent doing work-related activities that are not otherwise billable. As compared to the 2004 estimates, the following changes are needed:

- Increase average employee annual leave usage rate from 96 to 120 hours per year:
 - Average length of service for permit engineers is greater than 3 years, meaning the average engineer generates annual leave at a rate of 4.62 hours per pay period;
 - All annual leave is assumed to be paid out annually - unspent accrued annual leave will be paid out to the employee at the time of separation.
- Increase average employee sick leave usage rate from 64 to 96 hours per year:
 - Business Continuity Planning preparing for pandemic flu;
 - Increased use of sick time already observed;
 - Increased use of sick time for caring for ill family members also observed.
- Increase lost time due to turnover from 106 to 208 hours per year.
 - Turnover is generally less than past rates, but the length of time necessary to fill vacant positions has increased. On the average, at least 1.5 FTEs that generate billable hours have been vacant over the course of a year (i.e. 10% vacancy). A 10% vacancy results in a loss of 208 hours per year per position.

2. Program Time

Program time is the category that includes activities that are directly related to the program, but may or may not be billable due to the fee rules in place. After reviewing the 2004 estimates, the following changes are included:

- Increase General Permit Development time from 50 to 60 hours per year per FTE
 - Renewed general permits observed to take approximately 500 hours of development time. With 9 active and contemplated general permits over 15 permit engineering positions, and 5 year permit terms $(9*500)/(15*5) = 60$ hours per year.

3. Updated Burdened Rate Calculation (Per FTE)

The term “burdened rate” is used to describe an hourly fee that accounts not only for the costs of providing a service, but also for other costs associated with providing that service. The burdened rate in ADEQ’s air quality fee rule includes such costs as other operating expenses (i.e., supplies, office space, computer, etc.), indirect costs (i.e., administrative support, payroll, technology support, etc.), and the costs of oversight (i.e., time spent by the supervisor, manager, and Division Director).

The private market rate would typically range from \$130 to \$200 per hour.

ADEQ does not expect to negatively impact employment by increasing either structural or frictional unemployment, on either a long or short term basis.² Further, ADEQ does not expect this rulemaking to impact industrial production or growth, and no source is expected to reduce or halt its output as a result of the increased fees. Finally, ADEQ anticipates no adverse impact to source revenues or payrolls.

Consumers and Public

ADEQ expects a minimal impact to consumers and the general public. Although some sources may absorb the higher cost of doing business, other may pass on the higher costs to consumers, depending on market conditions and elasticities of buyers and sellers. Adjusting revenue streams for the Air Quality Division will facilitate timely issuance of air pollution control permits to further improve air quality and achieve national public health standards with appropriate permit conditions. Finally, maintaining adequate staffing levels for inspections, compliance, and enforcement increases incentives for compliance, actual compliance levels, and timely response to complaints. All of these reduce emissions from regulated sources, which in turn prevent adverse health effects that cost the public in medical care and lost productivity.

F. Potential Impacts to Small Businesses

State law requires agencies to reduce the impact of a rule on small businesses when legal and feasible. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B) for reducing the impact of this rule on small businesses: (1) exempt them from any or all rule requirements, (2) establish performance standards that would replace any design or operational standards, or (3) institute reduced compliance or reporting requirements, such as establishing less stringent requirements, consolidating or simplifying them or setting less stringent schedules or deadlines.

Considering the methods described above, one alternative that reduces costs for small businesses is for eligible sources to apply for a General Permit under R18-2-511. General Permits may reduce costs because sources would not be required to pay an hourly permit processing fee. Other methods implementing the statutory objectives of this rulemaking that might reduce the impact on small businesses or be less costly or intrusive would not be feasible.

ADEQ will continue to provide assistance to small businesses and other sources that request such assistance through the Small Business Assistance Program.

G. Endnotes

¹ The additional FTEs include one each for the Northern and Southern Regional Offices; three for Central Regional Office.

² Structural unemployment results from changes in the economy that cause the loss of jobs and create others for which the unemployed are unqualified, whereas frictional unemployment is caused from changing market conditions where the unemployed represent “qualified” persons with transferable skills. The latter can be caused by imperfect or incomplete information that prevents employees from leaving one job and finding another quickly.

Addendum A

Under R18-2-326, ADEQ must adjust permit fees every November 1 by using the Consumer Price Index (CPI) average for that year. The CPI for any year is the average CPI for all urban consumers (CPI-U), not seasonally adjusted. CPI values are published monthly by the Bureau of Labor Statistics, U.S. Department of Labor.

Each year, the fee will be adjusted by multiplying by the CPI-U for the most recent year and dividing by the CPI for the base year.

The hourly rate is for permit processing time required for a billable permit action under R18-2-326(B). The fee pertains to owners or operators of a Class I Title V source, Class II Title V source, or Class II Non-Title V source. The 2004 rate was \$98.80. The hourly rates, adjusted

under R18-2-326(H), for November 1, 2005 and 2006 are: \$101.90 ($\$98.80 \times 192.8 / 187.0$) and \$105.80 ($\$98.80 \times 200.3 / 187.0$). The current proposed rate is \$133.50 per hour.

The emission-based fees, adjusted under R18-2-326(C)(2)(d), for November 1, 2005 and 2006 are: \$13.65 ($\$13.24 \times 192.8 / 187.0$), and \$14.17 ($\$13.24 \times 200.3 / 187.0$). The current proposed fee is \$38.25. This fee only applies to emissions up to 4,000 tons per year per regulated pollutant (except for carbon monoxide for which no fee is assessed).

The following tables show how the fees changed based on these adjustments and the proposed new rates. The last table pertains to General Permits.

Class I Title V Source Category [R18-2-326(C)]	Administrative Fee 2004	2005	2006	2007 Proposed
Aerospace	\$14,540	\$14,990	\$15,570	\$22,400
Air Curtain Destructors	-	-	-	\$840
Cement Plants	\$44,520	\$45,900	\$47,690	\$68,590
Combustion/Boilers	\$10,820	\$11,160	\$11,590	\$16,680
Compressor Stations	\$8,900	\$9,180	\$9,530	\$13,710
Electronics	\$14,320	\$14,760	\$15,340	\$22,070
Expandable Foam	\$10,260	\$10,580	\$10,990	\$15,810
Foundries	\$13,640	\$14,060	\$14,610	\$21,020
Landfills	\$11,150	\$11,500	\$11,940	\$17,190
Lime Plants	\$41,700	\$42,990	\$44,670	\$64,790
Mines	\$10,480	\$10,800	\$11,230	\$16,150
Mobile Home Mfg	\$10,370	\$10,690	\$11,110	\$16,150
Others	\$11,150	\$11,500	\$11,940	\$15,970
Others w/ CEM	\$14,320	\$14,760	\$15,340	\$22,060
Paper Mills	\$14,310	\$14,750	\$15,330	\$16,680
Paper Coaters	\$10,820	\$11,160	\$11,590	\$24,480
Petrol Prod Term Fac	\$15,890	\$16,380	\$17,020	\$22,060
Petroleum Refinery	N/A	N/A	N/A	\$16,680
Polymeric Fabric Coaters	\$14,310	\$14,750	\$15,330	\$29,010
Reinforced Plastics	\$10,820	\$11,160	\$11,590	\$68,590
Semiconductor Fab	\$18,830	\$19,410	\$20,170	\$17,710
Copper Smelters	\$44,520	\$45,900	\$47,690	\$35,080
Utilities - Natural Gas	\$11,490	\$11,850	\$12,310	\$17,020
Utilities - Fossil Fuel	\$22,760	\$23,470	\$24,380	\$16,680

Class I Title V Source Category [R18-2-326(C)]	Administrative Fee 2004	2005	2006	2007 Proposed
Vit/Pharm Mfg	\$11,050	\$11,390	\$11,840	\$22,070
Wood Furniture	\$10,820	\$11,160	\$11,590	\$22,070

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(C).

CLASS II Title V Source Category [R18-2-326(D)]	Administrative Fee 2004	2005	2006	2007 Proposed
Synthetic minor sources	*	*	*	*
Stationary	\$5,640		\$5,810	\$8,690
Portables	\$5,640	\$5,810	\$6,040	\$8,690
Small Source	\$560	\$580	\$600	\$840

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(D).

*See the Class I Title V table. The administrative fees are as follows: for a synthetic minor, except a portable source, it is the same as the fee from Class I title V for that category; for a stationary and a portable source, it is \$5,640; for a small source, it is \$560.

Class II Non-Title V Source Category [R18-2-326(E)]	Inspection Fee 2004	2005	2006	2007 Proposed
Stationary	\$3,660	\$3,770	\$3,920	\$5,630
Portables	\$3,660	\$3,770	\$3,920	\$5,630
Gasoline Stations	\$560	\$580	\$600	\$840

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(E).

General Permits Administrative Fee [R18-2-511(B)]	2004	2005	2006	2007 Proposed
Class I Title V	*	*	*	*
Class II Title V Small	\$540	\$540	\$540	\$840
Other Class II Title V	\$3,250	\$3,250	\$3,250	\$4,870
General Permits Inspection Fee [R18-2-511(B)]				
Class II Non-Title V Gasoline Stations	\$540	\$540	\$540	-
Class II Non-Title V Crematories	\$1,080	\$1,080	\$1,080	\$1,620
Other Class II Non-Title V	\$2,170	\$2,170	\$2,170	\$3,250

* Administrative fee for category from R18-2-326(C)

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: David Lillie
Address: ADEQ, Air Quality Planning Section, 1110 West Washington St.,
Phoenix, AZ 85007
Telephone: (602) 771-4461 (Any extension may be reached in-state by dialing 1-
800-234-5677, and asking for a specific number.)
Fax: (602) 771-2366
E-mail: Lillie.David@azdeq.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:

3:00 p.m., October 18, 2007
Conference Room 250
1110 W. Washington St.
Phoenix, AZ 85007
Close of Comment: October 18, 2007 @ 5:00 p.m.

11. Any other matter prescribed by statute that is applicable to the specific agency or to any other specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY –
AIR POLLUTION CONTROL

ARTICLE 3. PERMIT AND PERMIT REVISIONS

Section

R18-2-326. Fees Related to Individual Permits

ARTICLE 5. GENERAL PERMITS

Section

R18-2-511. Fees Related to General Permits

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-326. Fees Related to Individual Permits

A. Source Categories. The owner or operator of a source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees are based on a source being classified in one of the following three categories:

1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and for which either R18-2-302(B)(2)(a)(i) or (ii) applies.
3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) and for which neither R18-2-302(B)(2)(a)(i) nor (ii) applies.

B. Fees for Permit Actions.

1. The owner or operator of a Class I Title V source, Class II Title V source, or Class II Non-Title V source shall pay to the Director the following:
 - a. ~~\$98.80~~ \$133.50 per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action; and
 - b. the actual costs of public notice conducted according to R18-2-330.
2. The Director may require periodic payment of permit processing fees based on the most recent accounting of time spent processing the permit including any fees for contractors.
3. Upon completion of permit processing activities other than issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit or permit revision until the final bill is paid in full.

C. Class I Title V Fees. The owner or operator of a Class I Title V source that has undergone initial startup by January 1 shall annually pay to the Director an administrative fee plus an emissions-based fee as follows:

1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class I Title V Source Category	Administrative Fee
Aerospace	\$ 14,450 <u>\$ 22,400</u>

<u>Air Curtain Destructors</u>	<u>\$ 840</u>
Cement Plants	\$ 44,520 <u>\$ 68,590</u>
Combustion/Boilers	\$ 10,820 <u>\$ 16,680</u>
Compressor Stations	\$ 8900 <u>\$ 13,710</u>
Electronics	\$ 14,320 <u>\$ 22,070</u>
Expandable Foam	\$ 10,260 <u>\$ 15,810</u>
Foundries	\$ 13,640 <u>\$ 21,020</u>
Landfills	\$ 11,150 <u>\$ 17,190</u>
Lime Plants	\$ 41,700 <u>\$ 64,790</u>
Copper & Nickel Mines	\$ 10,480 <u>\$ 16,150</u>
Gold Mines	\$ 10,480 <u>\$ 16,150</u>
Mobile Home Manufacturing	\$ 10,370 <u>\$ 15,970</u>
Paper Mills	\$ 14,310 <u>\$ 22,060</u>
Paper Coaters	\$ 10,820 <u>\$ 16,680</u>
Petroleum Products Terminal Facilities	\$ 15,890 <u>\$ 24,480</u>
Polymeric Fabric Coaters	\$ 14,310 <u>\$ 22,060</u>
Reinforced Plastics	\$ 10,820 <u>\$ 16,680</u>
Semiconductor Fabrication	\$ 18,830 <u>\$ 29,010</u>
Copper Smelters	\$ 44,520 <u>\$ 68,590</u>
Utilities - Natural Gas	\$ 11,490 <u>\$ 17,710</u>
Utilities - Fossil Fuel Except Natural Gas	\$ 22,760 <u>\$ 35,080</u>
Vitamin/Pharmaceutical Manufacturing	\$ 11,050 <u>\$ 17,020</u>
Wood Furniture	\$ 10,820 <u>\$ 16,680</u>
Others	\$ 11,150 <u>\$ 22,070</u>
Others with Continuous Emissions Monitoring	\$ 14,320 <u>\$ 22,070</u>

2. An emissions-based fee of ~~\$13.24~~ \$38.25 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (d) and due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
 - a. For purposes of this Section, "actual emissions" means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
 - b. For purposes of this Section, regulated pollutants consist of the following:
 - i. Nitrogen oxides and any volatile organic compounds;
 - ii. Conventional air pollutants, except carbon monoxide and ozone;

- iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds; and
 - iv. Any federally listed hazardous air pollutant.
- c. For purposes of this Section, the following emissions of regulated pollutants are excluded from a source's actual emissions:
- i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;
 - ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM₁₀;
 - iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(E)(8);
 - iv. Fugitive emissions of PM₁₀ from activities other than crushing, belt transfers, screening, or stacking; and
 - v. Fugitive emissions of VOC from solution-extraction units.
- d. The Director shall adjust the rate for emission-based fees every November 1, ~~beginning on November 5, 2004~~ after December 4, 2007, by multiplying ~~\$13.24~~ \$38.25 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2004~~ 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.
- D. Class II Title V Fees. The owner or operator of a Class II Title V source that has undergone initial startup by January 1 shall pay the applicable administrative fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

CLASS II Title V Source Category	Administrative Fee
Synthetic minor sources, except portable sources	Administrative fee from Class I Title V table for category
Stationary	\$5,640 <u>\$ 8,690</u>
Portables	\$5,640 <u>\$ 8,690</u>
Small Source	\$560 <u>\$ 840</u>

E. Class II Non-Title V Fees. The owner or operator of a Class II Non-Title V source that has undergone initial startup by January 1 shall pay the applicable inspection fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Non-Title V Source Category	Inspection Fee
Stationary	\$ 3,660 \$ 5,630
Portables	\$ 3,660 \$ 5,630
Gasoline Service Stations	\$ 560 \$ 810

F. The Director shall mail the owner or operator of each source an invoice for all fees due under subsections (C), (D), or (E) by December 1.

G. Any person who receives a final itemized bill from the Director under this Section for a billable permit action may request an informal review of the hours billed and may pay the bill under protest as provided below:

1. The request shall be made in writing, and received by the Director within 30 days of the date of the final bill. Unless the Director and person agree otherwise, the informal review shall take place within 30 days after the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the person at least 10 business days before the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. The Director shall mail his or her decision on the informal review to the person within 10 business days after the informal review date.
2. The Director's decision after informal review shall become final unless, within 30 days after person's receipt of the informal review decision, the person requests a hearing under R18-1-202.
3. If the final itemized bill is paid under protest, the Director shall take final action on the permit or permit revision.

H. The Director shall adjust the hourly rate every November 1, to the nearest 10 cents per hour, ~~beginning on November 5, 2004,~~ after December 4, 2007, by multiplying ~~\$ 98.80~~ \$133.50 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2004~~ 2007. The Director shall adjust the administrative or inspection fees listed in subsections (C), (D), and (E) every November 1, to the nearest \$10, beginning ~~on November 5, 2004~~ December 4, 2007, by multiplying the administrative or inspection fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the

year ~~2004~~ 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

- I. An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days before filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee is non-refundable to the extent of the Director's costs for accelerating the processing if the Director undertakes the accelerated processing described below:
1. If an applicant requests accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision according to the following schedule:
 - a. For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
 - b. For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days after receiving a complete application.
 2. At any time after an applicant requests accelerated permit processing, the Director may require additional advance payments based on the most recent estimate of additional costs.
 3. Upon completion of permit processing activities but before issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring, or supervising the work of outside consultants, and all advance payments submitted for accelerated processing. In the event all payments made exceed actual accelerated permit costs, the Director shall refund the excess advance payments. Nothing in this subsection affects the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.
- J. Inactive Sources. The owner or operator of a permitted source that has undergone initial startup but was shut down for the entire preceding year shall pay 50 percent of the administrative or inspection fee required under subsection (C), (D), or (E). The owner or operator of a source

claiming inactive status under this subsection shall submit a letter to the Director by ~~October~~ December 15 of the ~~billing~~ calendar year for which the source was inactive. Termination of a permit does not relieve a source of any past fees due.

K. If an applicant uses the Tier 4 method for conducting a risk management analysis (RMA) according to R18-2-1708(B), the applicant shall pay any costs incurred by the Director in contracting for, hiring or supervising work of outside consultants.

L. Fees for Class I Title V Petroleum Refineries. The owner or operator of a Class I Title V petroleum refinery for which construction has commenced after January 1, 2007, shall pay to the Director an administrative fee plus an emissions-based fee annually as follows:

1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

<u>Class I Title V Refinery</u>	<u>Administrative Fee</u>
<u>Calendar Year During Which Commencement of Construction Occurred</u>	<u>\$96,250</u>
<u>First Calendar Year After Commencement of Construction</u>	<u>\$192,500</u>
<u>Second Calendar Year After Commencement of Construction</u>	<u>\$288,750</u>
<u>Each Subsequent Calendar Year After Commencement of Construction but Before Initial Startup</u>	<u>\$385,000</u>
<u>Each Calendar Year of or After Initial Start-Up</u>	<u>\$385,000</u>

2. An emissions-based fee for actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier that shall be paid as described in subsection (C)(2).

~~K~~ M. Transition.

1. Subsections (A) through (J) of this Section are effective ~~November 5, 2004~~ December 4, 2007. The first administrative or inspection fees are due on February 1, ~~2005~~ 2008.

2. Except as provided in subsection (b), all fees incurred after ~~November 5, 2004~~ December 4, 2007, are payable in accordance with the rates contained in this Section.

a. Emission-based fees for calendar year ~~2003~~ 2006 shall be billed at ~~\$ 13.24~~ \$ 38.25 per ton and be due February 1, ~~2005~~ 2008.

- b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
- c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department.

ARTICLE 5. GENERAL PERMITS

R18-2-511. Fees Related to General Permits

- A. Permit Processing Fee. The owner or operator of a source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of ~~the~~ each application. This fee applies to the owner or operator of any source who intends to continue operating under the authority of a general permit that has been proposed for renewal. This fee also applies to requests for new Authorizations to Operate (ATOs) for new equipment.
- B. Administrative or Inspection Fee. The owner or operator of a source ~~with authority~~ required to operate under have a general permit, that has undergone initial startup by January 1, shall pay, for each calendar year, the applicable administrative or inspection fee from the table below, by February 1 or 60 days after the Director mails the invoice, whichever is later.

General Permit Source Category	Administrative Fee
Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$ 540 <u>\$ 840</u>
Other Class II Title V General Permits	\$ 3,250 <u>\$ 4,870</u>
	Inspection Fee
Class II Non-Title V Gasoline Services	\$ 540
Class II Non-Title V Crematories	\$ 1,080 <u>\$ 1,620</u>
Other Class II Non-Title V General Permits	\$ 2,170 <u>\$ 3,250</u>